

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 182 CUTTACK, TUESDAY, FEBRUARY 6, 2007 / MAGHA 17, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 4th January 2007

No. 110—li/1(S)-49/1999-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th November 2006 in Industrial Dispute Case No. 44/1999 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of M/s Samaleswari Regional Co-operative Milk Producers Union Ltd., Sakhipada, Sambalpur and its workman Shri Ramesh Chandra Pradhan, At/P.O. Sountapur, Via Rajendra College, Dist. Balangir was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 44 OF 1999

Dated the 15th November 2006

Present :

Shri P. K. Mohapatro, LL. B.
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of	.. First Party—Management
M/s. Samaleswari Regional Co-operative Milk	
Producers Union Ltd., Sakhipada, Sambalpur	
Dist. Sambalpur.	

And

Its workman	.. Second Party—Workman
Shri Ramesh Chandra Pradhan	
At Sauntapur, Via Rajendra College	
Balangir, Dist. Balangir.	

Appearances :

For the First Party—Management	..	Shri N. Kar, Advocate
For the Second Party—Workman	..	Shri R. N. Debta, Advocate

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 & 12 of the Industrial Disputes Act, 1947 vide Memo No. 16364(5), dated the 22nd December 1999 for adjudication of dispute scheduled below :

“Whether the dismissal of Shri Ramesh Chandra Pradhan, P. A. H. Assistant from service by the management of M/s. Samaleswari Regional Co-operative Milk Producers Union Ltd., Sakhipada, Sambalpur with effect from the 23rd February 1995 is legal and/or justified ? If not, to what relief Shri Pradhan is entitled ?”

2. In his statement of claim the workman has mentioned that while he was serving in Samaleswari Regional Co-operative Milk Producers Union Ltd., Sakhipada, Sambalpur (here-in after referred as Milk Union Office) a disciplinary proceeding was initiated against him without any reasonable ground and vide Order No. 127, dated the 19th August 1994 charge-sheet was presented containing certain false allegations and vide Order No. 126, dated the 19th August 1994 he was placed under suspension and Dr. G. C. Sar was appointed as Enquiry Officer, but during the period of suspension no subsistence allowance was paid to him and during the enquiry period, the list of documents and witnesses relied on by the management were not supplied to him and the Marshelling Officer even did not adduce oral or documentary evidence, but the Enquiry Officer arbitrarily recorded and obtained his signature on a statement by inducing him that he would submit a favourable report to the management and by believing it, he (workman) put his signature in it but to his utter surprise, on the 11th January 1995 he was served with an Order No. 142, dated the 30th December 1994 asking him to show-cause as to why he shall not be dismissed and along with the said show-cause an enquiry report dated 30th November 1994 was enclosed with a further direction in it to deposit Rs. 19,711 under threat of initiating Criminal Proceeding, as a result he out of fear submitted his explanation and deposited certain amount but the management without considering the positive steps taken by him relied on the perfunctory report of the Enquiry Officer and dismissed from service vide Order No. 149, dated the 23rd February 1995. Thereafter, he filed an appeal before the Chairman of the Milk Union who is also the Collector of the District, but vide Order No. 214, dated the 1st November 1995 the said appeal was dismissed and then he had approached the Labour Department Officers who initiated a proceeding and then presented a failure report. Thereafter the Government has referred this dispute to this Court for adjudication. To sum up, the workman has prayed for answering the reference in his favour and to reinstate him in service with full back wages. He has also prayed for continuity in the service and other benefits.

3. The management side has contested the above claim by stating that the workman is not a 'workman' as visualised in the I. D. Act. Furthermore, in his capacity as Procurement and Animal Husbandary Assistant at Bargarh, he is in-charge of the Milk Societies of Bargarh-Rampur Milk route, but he performed his duties in an indisciplined manner, as a result, a charge-sheet was presented vide Letter No. 1915, dated the 29th December 1992 (Ext. 6) against him by taking note of the misconduct and vide Office order No. 1860, dated the 23rd December 1992 (Ext. 5) he was placed under suspension. According to the management, there was allegation of temporary misappropriation and then the workman admitted his guilt vide Letter dated the 4th January 1993 (Ext. 7) with the assurance that in future such omissions would not occur and basing on his written admission, he was reinstated in service and a lenient view was taken with the conclusion that the period of suspension was treated as such. Then vide Order No. 4, dated the 13th January 1993 (Ext. 8) he was reinstated in service. It is also the case of the management that thereafter fresh allegations have been received against the workman and after a preliminary enquiry, he was again placed under suspension vide Order dated the 19th August 1994 (Ext. 9) and on the same day, a charge-sheet (Ext. 10) was also presented against him asking him (workman) to explain as to why his services shall not be terminated or heavy disciplinary action shall not be taken against him. But after receiving the same the workman remained silent and did not present any explanation. Then to enquire the entire allegation an Enquiry Officer was appointed. Accordingly the Enquiry Officer fixed the date of enquiry to the 30th November 1994 in the Head Office at Sambalpur and on the same day, the workman has presented an application to the General Manager of the Milk Union Office admitting that an amount of Rs. 29,711 was outstanding against him as on the 30th November 1994 and out of it an amount of Rs. 10,000 was already deposited by him vide Bill No. 3740 and the balance amount would be recovered from his salary at the rate of Rs. 1000 per month and being armed with the said petition of the workman, which was presented in presence of Shri K. N. Murty (M. W. 3) and Birat Pradhan, the General Manager conducted an enquiry in his office and even recorded his (workman) statement and on the basis of the same, he was satisfied that the workman was guilty of misconduct as he has misappropriated the Milk Union money and accordingly directed him to show-cause as to why the extreme penalty shall not be imposed on him and the balance amount of Rs. 19,711 with interest shall not be realised from him. The workman after receiving the show-cause letter and the enquiry report dated the 30th November 1994 submitted his reply on the 24th January 1995 and then the General Manager of the Milk Union Office weighed the same by keeping in view the different omissions and commissions committed by him and taking note of the past antecedents, he passed an order of dismissal against the workman. According to the management the order of dismissal is justified and there is no reason to take a lenient view on the workman. Regarding non-payment of subsistence allowance it is the case of the management that the entire amount due in this regard was adjusted in respect of the dues outstanding against him. In the body of the written statement it is specifically averred by the management that at no point of time after receiving Ext. 10, he (workman) has asked for better particulars from the management and as the enquiry was conducted by the Disciplinary authority so there is no reason for him to be prejudiced. In Para. 19 of the written statement the management side has given emphasis to the admission of guilt in respect of the charges framed against the workman and according to the management in view of the above situation,

there is no reason for the Marshelling Officer to adduce any oral or documentary evidence. Furthermore, according to the management a detail enquiry was not taken up as the workman has admitted his guilt in that enquiry and gave a statement accordingly. By mentioning the above facts and circumstances the management side has prayed for answering the reference against the workman.

4. After receiving the copy of the written statement the workman has filed a rejoinder. In it the claim of the management that the workman is not a 'workman' under the Industrial Disputes Act was challenged. To add to this the initial charge-sheet (Ext. 6) and the suspension Order dated the 23rd December 1992 (Ext. 5) were seriously challenged on the ground that false allegations have been enshrined in it and a plea is taken that on the basis of advice of Shri P. G. Dora (M. W. 2), he was compelled to file Ext. 7. In the rejoinder the workman has further mentioned that Ext. 7 was presented by him as because M. W. 2 had assured him to reinstate him in service. In the rejoinder, the workman has also challenged the allegations of misappropriation which was levelled afresh against him and regarding the admission statement (Ext. 13) and the enquiry conducted by M. W. 2 on dated the 30th November 1994 in the form of question and answer (Ext. 15). He (workman) has come up with the specific plea that M. W. 2 had threatened him and his father for criminal action and also pressed them to put their signatures there as a result he was given his signature in it (Ext. 15). In Para. 7 of his rejoinder the workman has further mentioned that on the 30th November 1994 M. W. 2 detained him and his father in the office and after closure of the office hour, his father was compelled to deposit a sum of Rs 10,000 which was received by Shri K. N. Murty (M. W. 3) and at about 7-00 P.M., M. W. 2 dictated a letter and as per the said dictation, he (workman) admitted the alleged charges. In the same Para. it is also averred by the workman that at about 8-30 P.M. of the 30th November 1994 he and his father were again called by M. W. 2 and their signatures were taken on the statement recorded by him. To sum up, the workman has challenged the confessional statement (Ext. 15) recorded by M. W. 2 and further stated that M. W. 2 has no authority to record such a statement as Dr. G. C. Sar was the Enquiry Officer appointed by him. He has also challenged the allegation of misappropriation with a specific plea in Para. 11 of the rejoinder that till now the memory of the management had failed them to institute any dispute case for recovery of the alleged misappropriation amount and in absence of the same, the allegation of misappropriation is an imagination and it be held that there is no merit in the same and he may be reinstated in service with full back wages.

5. By taking the note of the pleadings of the parties the following issues have been framed for adjudication of this case.

ISSUES

- (i) "Whether the domestic enquiry conducted by the management is fair and proper?"
- (ii) "Whether the dismissal of Shri Ramesh Chandra Pradhan, P. A. H. Assistant from service by the management of M/s. Samaleswari Regional Co-operative Milk Producers Union Ltd., Sakhipada, Sambalpur with effect from the 23rd February 1995 is legal and/or justified?"
- (iii) "To what relief, if any, Shri Pradhan is entitled?"
- (iv) "Whether the workman (Second party) is a 'Workman' within the length and breadth of the I. D. Act?"

6. During the course of trial, the management side has examined three witnesses. The in-charge General Manager of the Milk Union Office namely Kishore Kumar Nayak is examined as M. W. 1 and the General Manager Shri P. G. Dore is examined as M. W. 2. The Assistant Manager of Milk Union Office namely Shri K. N. Murty is examined as M. W. 3. In addition to the oral evidence adduced by the officers as stated above, the management side has proved as many as 21 documents which are marked as Ext. 1 to 21. The documents as exhibited from the side of the management will be pointed out in the body of the award as and when necessary.

The workman is only examined from his side and through his mouth the learned counsel for the management has prayed Ext. 7 his signature in Ext. 7, Ext. 10 and his signature in the body of Ext. 13 which is marked as Ext. 13/a in this case. He has also admitted his signature available in Ext. 15 and the signatures given by his father in the body of Ext. 13 and 15. By keeping the above background in view, I will answer the issues settled in this case.

FINDINGS

7. *Issue No. (i)*—It may be pertinent to mention here that by keeping in view to the dictum laid by the Apex Court that in case of dismissal of an employee if there is a departmental proceeding conducted prior to the dismissal, the fairness of the same is to be decided as a preliminary issue, the same was taken up but on the 10th April 2002 the learned counsels for the parties have agreed that all the issues be taken up at a time and accordingly the fairness of the domestic enquiry was not taken up as preliminary issue, as a result all the issues are to be weighed now on legal prospective. So the issue No. (i) is answered accordingly.

8. *Issue No. (iv)*—In the written statement the management has taken the plea that the workman was performing his duties of a Supervisor and accordingly he can not be regarded as a 'workman' under the length and breadth of the Industrial Disputes Act. The workman has challenged it by stating that the evidence adduced by the M. Ws. are sufficient to treat him as a workman within the meaning of the I. D. Act. I took judicial note of the evidence adduced by the M. Ws. and after scrutiny I am of view that the workman is a 'workman' under the length and breadth of the I. D. Act. I will now assign reasons for my such conclusion.

9. It is a well settled law that the exclusion from the definition Section of 'workman' has to be proved by the party who claims that the case falls in any of the excluded categories. It is also a well settled law that more designation is not sufficient to conclude that he is in a Supervisor grade and he is not a workman. In order to treat him as such it must be proved by way of positive evidence that by virtue of his position as a Supervisor, he was controlling the other employees and that he was also having a say in their official duty. It must also be proved that the Supervisor occupies a position of command and he is authorised to take decisions independently without sanction of the management. In the present case there is no satisfactory evidence to conclude that the present workman is not a workman and he was acting as a Supervisor. The evidence of M. W. 1 that he had no power to sanction any leave or to take any disciplinary action against any employee of the organisation is sufficient to say that he is not a Supervisor, but he was performing the clerical functions. This witness has also stated that no job chart was issued to the workman after joining. According to him, the workman was to

perform tours to different Primary Milks Societies for Supervision. He has also stated that the Societies are managed by the Board of Directors. As such, the workman has no say in the administration of the Primary Societies. The evidence of the workman in this regard is also very specific. So it is very difficult to say that the workman is not a workman as visualised under the I. D. Act. The above issue is answered accordingly.

10. *Issue Nos. (ii) and (iii)* : The above issues are taken up together as those are interlinked. It is the specific allegation of the management that the workman is dismissed from service as he committed misappropriation of Milk Union fund and remained unauthorised absence in the Headquarters. As it appears in the body of the charge-sheet importance is given to the above factors. If it is found that the workman has misappropriated the money of the Milk Union office, then it can be treated as a serious misconduct and the punishment of termination can not be said to be illegal and unjustified. The learned counsel for the management has relied on some judicial pronouncements in this regard and the substratum of it is that misappropriation of money of the employer by the workman is to be seriously viewed as the same is a serious misconduct and the termination of the workman can not be said to be illegal and unjustified. Though the learned counsel for the workman has distinguished the case laws relied by the learned counsel for the management in this line, but in my opinion it is hard to accept it, as judicial pronouncements are highly settled that such lapses are to be seriously viewed and should not be interfered by the Labour Courts. *M. W. 1* who was the incharge General Manager at the relevant time in his evidence in Court has also given emphasis to the allegation of misappropriation and unauthorised absence of the workman from duty. In cross-examination he has also stated that the finding of the Enquiry Officer in relation to the above lapses are the basis of terminating the service of the workman. The learned counsel for the management during course of his argument has submitted that he is only giving emphasis to the allegations of misappropriation and there is no reason to give importance to the other allegations levelled against the workman in the charge-sheet. In view of the anbove background there is no reason of discussing the other aspects of the charge-sheet except the allegation of misappropriation.

11. In the body of the charge-sheet (Ext. 10) there is allegation that he (workman) had received payments for handing it over to different ocieties under his supervision and without paying the same, he had misappropriated it, as a result, the Societies did not receive the payments in time and the normal activity of the Societies was disrupted. Admittedly in the charge-sheet there is no specific mention of amount swallowed by the workman and there are dearth of particulars to conclude as to what amount was misappropriated by the workman in respect of the individual Society. It is also admitted case of the parties that no criminal case was instituted against the workman pertaining to the alleged misappropriation. The learned counsel for the management in order to substantiate the above aspect has pointed his finger to certain circumstances and facts which according to him are congenial to conclude that the workman has committed the misappropriation of funds of the Milk Union. At the outset he has submitted that after receiving copy of the charge-sheet the workman did not submit any explanation as a result the Enquiry Officer and Marshelling Officer were appointed to enquire the allegations levelled against him. Admittedly an additional charge-sheet was also submitted

against the workman pertaining to non-settlement of accounts of the different Milk Producing Societies and after receiving it, according to the learned counsel for the management no explanation was also furnished by the workman. He then gave sufficient emphasis to the amount deposited by the workman on the 30th November 1994, under the management and the petition filed by him on the same day addressing to the General Manager wherein there is detail mention of the amount to be paid to the individual Societies. He has then pointed his finger to the request made by the workman by presenting Ext. 13 and the steps taken by the General Manager after receiving the same. According to him the enquiry conducted by the General Manager after receiving Ext. 13 and the enquiry report (Ext. 15) are sufficient to conclude that the workman has admitted the allegations of misappropriation to the tune of Rs. 29,711 voluntarily and in view of the above background there is no reason for conducting a discreet enquiry as according to him a detail enquiry will be a wastage of time and knowledge. The learned counsel for the workman has challenged the above aspects to his plausible extent and even in his written argument he tried his best to eradicate the entire liability from the head of the workman. In order to appreciate the rival stand of the parties pertaining to the above important aspect, I am of opinion to take judicial note of the pleadings, stand of the parties in this regard, the oral and documentary evidence adduced by them and the legal implication of Exts. 13 and 15 in the background as shown in this proceeding.

12. It is a settled law that facts admitted need not be proved and facts not pleaded should not be looked into. In Para. 7 of the statement of claim, the workman has averred that after receiving the order No. 142, dated the 30th December 1994 wherein direction was given to him to deposit an amount of Rs. 19,711 with a clear cut threatening to initiate criminal proceeding in absence of payment, he (workman) submitted his explanation and deposited certain amount. So in Para. 7 there is an indication from the side of the workman with regard to the payment/deposit of certain amount by him. It may be pertinent to mention here that there is no specific evidence from the side of the workman to rule out the above pleading and the anomaly existing from this averment and in absence of the same, it can be safely said that the workman had deposited certain amount prior to the order of dismissal passed against him. During the course of trial, the workman tried his best to conceal this part of his pleading and put forth a case that he had not deposited a sum of Rs. 10,000 as stated by the management and his father might have given it. The evidence of the workman available in his examination-in-chief in Para. 3 cannot be easily swallowed in absence of any reasonable explanation pertaining to the admission made by him in Para 7 of his statement of claim that out of fear and finding no other way, he submitted his explanation and deposited certain amount, but without considering the steps taken by him, he was dismissed from service. What is more surprising is that vide Para. 7 of the rejoinder, the workman has stated that M.W. 2 had detained him and his father on the 30th November 1994 in the Milk Union Office and after closure of the office hour, his father was compelled to deposit Rs. 10,000 which was received by Shri K.N. Murty. In the statement of claim there is no mention of amount deposited and rather there is a clear cut averment that he had deposited certain amount after receiving threatening of initiation of criminal proceeding. So the stand of the workman in his statement of claim and the rejoinder pertaining to the above important aspect is not coinciding to each

other. To add to this, in the statement of claim there is no specific averment that M.W. 2 had compelled the father of the workman to deposit Rs. 10,000 and that he (M.W. 2) even dictated a letter which was reduced in to writing by the workman. In Para. 7 it is stated by the workman that at about 7-00 p.m. Shri P.G. Dora dictated a letter and according to his dictation, the workman admitted the alleged charges. So there is no clear cut mention in the rejoinder that the workman admitted the alleged charges, but according to him (workman) it was done due to the compelling circumstances as stated in Para. 7 of the rejoinder. In Para. 6 of the statement of claim the workman has stated that the Enquiry Officer arbitrarily recorded a statement and obtained the signature of the workman therein with the inducement that he would submit a favourable report to the management. It is also mentioned in Para. 6 of the statement of claim that the workman acting on good faith put his signature in the statement prepared by the Enquiry Officer. In the rejoinder it is stated by the workman that Shri P.G. Dora at about 8-30 p.m. of the 30th November 1994 called the workman and his father and then took their signatures on a statement recorded by him at the back of the workman. So the averment of the workman available in Para. 7 of the rejoinder indicates that the statement was prepared behind his back and simply his signature and the singnature of his father were obtained by Shri P.G. Dora. In his examination-in-chief, the workman took the plea that the General Manger at about 7-00 p.m. told his father that if the amount is not deposited then he would instruct the local police and he (workman) would be inside the bar and thereafter what his father did he has no idea. So in my opinion the stand of the workman relating to the execution of Exts. 13 and 15 are highly contradictory in nature and in a proceeding of a present type the same is to be seriously viewd. Though in a Indusrial Dispute pleading has a limited role to play, but by taking note of the contradictory stand taken by the workman in relation to execution of Exts. 13 and 15, it can be safely said that he is not in a position to account himself and he has come up with contradictory views with regard to it.

13. In his evidence, the workman has admitted his signature available in Ext. 13, but accoding to him, he was not aware of the contents of it. He has also admitted that the contents of Ext. 13 were written by him as per the dictation of the General Manager. At the cost of repetition, I would like to mention that there is no pleading from the side of the workman that the contents of Ext. 13 which is an application presented by the workman was written being dictated by the General Manager. So, the belated plea taken by him in his evidence in Court cannot be easily swallowed. I took judicial note of Ext. 13 and found that in the body of the same the workman has stated about the amount of the management available at his disposal and the alternative arrangement to be taken up by the management by accepting his application. Though in the evidence in Court, the workman has stated that Ext. 13 is an outcome of the dictation given by the General Manager, but in absence of any specific pleading in that regard and in absence of matterial particulars to meet the above situation, I am of view that Ext. 13 was presented by the workaman to the General Manager on the 30th Novemeber 1994 in presence of M.W. 3 and Birat Pradhan and the stand of the workman that he had simply obliged the General Manager as per his (General Manager) dictation cannot be accepted.

14. I took judicial note of the contents of Ext. 13 and after scrutiny, I am of view that the workman by presenting Ext. 13 has admitted that he had to pay Rs. 29, 711 to the Milk Union, but on that day, he had deposited Rs. 10,000 as a result, the balance amount is to be realised from him @ Rs. 1,000 per month till it is liquidated. The plea taken by the management in this regard and the evidence adduced by the witnesses to substantiate this aspect are lending additional strength to conclude that Ext. 13 was presented by the workman voluntarily to the General Manager to take suitable action by considering the positive steps taken by him. It cannot be held to be an outcome of the dictation alleged to have been given by the General Manager. Once Ext. 13 is accepted to be a voluntary act, the follow up actions taken by the General Manager cannot be held to be illegal. Being armed Ext. 13 there is every reason for the General Manager to go for a short cut enquiry in order to dispose of the charges levelled against the workman. In such a situation a detail enquiry is not necessary as the workman has admitted the amount to be paid by him to the Milk Union Office. In a proceeding of present type there is no reason to give pedantic meaning to the words available in the Ext. 13 as because this Court is not a Criminal Court wherein things are to be proved beyond all reasonable doubt. For the limited purpose of ascertaining that the workman by the 30th November 1994 had to pay an amount of Rs. 29,711 the contents of Ext. 13 are sufficient and to meet the standard of probability it is quite adequate. If it would have been a criminal case with the allegation of misappropriation, then a threadbare enquiry would have been undertaken and the evidence at present available in the record may not be held to be sufficient to meet the standard as required in a criminal trial. But in a proceeding of the present type, the evidence on record are sufficient to conclude, that the workman has voluntarily presented Ext. 13 and he has admitted amount of the management available at his disposal as on the 30th November 1994. In absence of convincing reason from the side of the workman it can be said that keeping the said amount at his disposal is nothing but temporary misappropriation within the length and breadth of financial transaction.

15. It is the specific evidence of the M.W. 2 that prior to the initiation of the enquiry of the Departmental proceeding, the workman appeared before him with his father and orally requested him to deduct the amount due on him from his salary as was done previously and then he (M.W.2) told him (workman) to deposit the entire dues as because it is more than the amount to be adjusted from his salary and he (General Manager) also told him that he would take a lenient view if the amount is deposited. He has also stated that the workman had deposited Rs. 10, 000 in the office and then praying mercy presented Ext. 13 to him in presence of his father and the Marshelling Officer Shri K.N. Murty and thereafter in presence of his father and the Marshelling Officer, he (General Manager) conducted an enquiry in question and answer from (Ext. 15). This witness has further stated that the balance amount was not deposited by him (workman) as per the commitment and then a second show cause notice was issued to him wherein all the relevant papers were enclosed, but the workman did not give any reply within the time limit. By pointing his finger to the above evidence of M. W. 2, the learned counsel for the workman has submitted that the alleged confession was obtained from the workman with a promise and in view of the above background it cannot be treated as fair and proper having sanction of law. In my opinion the above submission of learned

counsel for the workman may hold good in a criminal trial wherein the pros and cons of the confession is to be weighed by taking the voluntary aspect into consideration. But in a proceeding of the present type, the same has its significance and basing on the same, the action taken by M.W 2 cannot be held to be illegal. It can be simply treated as a 'Statement' given by the workman in relation to the indisciplined act committed by him while discharging his official functions though it may not be a circumstance to treat that it is a voluntary confession given in a criminal proceeding. What is a 'confession' and in what way does it differ from an admission and the law decided in relation to it in the case of *Pakala Narayanswami V. Employer* cannot be taken in to account as the present proceeding is summary in nature and the rigidities of Evidence Act are not strictly applicable. It (Ext. 13) can be used for the limited purpose of inferring that it is a statement by the workman admitting his misconduct. As such, to this extent Ext. 13 can be used. The submission that M.W. 2 has no authority to conduct an enquiry as because an Enquiry Officer was already appointed by him cannot be accepted as the situation had changed after presentation of Ext. 13 and for the limited purpose of ascertaining the intention of the workman, the enquiry conducted by M.W. 2 vide Ext. 15 is legal and in the premises can be acted upon. In the Industrial Law, there is no bar for the disciplinary authority to hold the domestic enquiry and then to impose the punishment. The further submission that the alleged confession is also not to be judicially noted as because by then the workman was under duress by not receiving the subsistence allowance cannot be accepted, as because, throughout proceeding up till the issuance of order of termination there was no challenge from the side of the workman that he was prejudiced by not receiving the subsistence allowance or that for non-payment of the same he could not participate in the proceeding in a better manner. It is a settled law that the prejudice caused for non-payment of subsistence allowance is to be pleaded and brought to the notice of the authority and in absence of the same it has no legal value. Furthermore, the submission that M.W. 2 cannot impose the punishment as because the workman had challenged his authority and even challenged the enquiry conducted by him vide Ext. 15. cannot be accepted as the blames were thrown to M.W. 2 after the actions were taken by him and not during the progress of the proceeding or soon after recording Ext. 15. As it appears in his reply to the second show cause notice dated the 24th November 1995 (Ext. 18) the workman has brought out the above referred allegations against the General Manager. In my opinion those are manufactured for the purpose of creating a defence case and there is no substance in it. To sum up, I am of opinion that Ext. 13 was presented by the workman after depositing the amount of Rs. 10,000 and it is his voluntary act and the follow up actions taken by the M.W. 2 after receiving the Ext. 13 can be held as legal as he is the disciplinary authority.

16. The learned counsel for the workman has also pointed out his finger to the authority of M.W. 2 to defend the case in absence of any clearance from the Board of Directors. He also submitted that non-production of documents pertaining to the alleged misappropriation is fatal to the case of the management. But in my opinion production of all the documents relevant for the purpose is necessary in a criminal trial as the standard of proof in that proceeding is beyond all reasonable doubts. But in this proceeding, the probability aspect is the guiding factor and in my opinion the evidence of M.Ws. coupled with the exhibits filed

from the management are sufficient to conclude that the workman has misappropriated the amount as reflected by him in the body of Ext. 13 and after recording of Ext. 15, the follow up actions taken by M.W. 2 is justified, legal and in the premises sounds probable.

17. My above view is defining the support from the fact that in the pleading the workman has also admitted regarding deposit of money and in the rejoinder he has gone a step forward by mentioning that on the 30th November 1994 M.W. 2 had compelled the father of the workman for depositing of Rs. 10,000 which amount was received by Shri K.N. Murty. As to whether the management has resorted to any dispute against the workman for recovery of the balance amount is not to be seriously viewed as the ultimate choice is with the management to take up that issue and the workman cannot compel the management to go in a particular direction in that regard. As such it cannot be said to be a technical misconduct and rather it can be said to be a serious misconduct. In view of the seriousness of the misconduct, the punishment imposed on the workman cannot be held to be disproportionate. The previous record of the workman is also bad as forthcoming from Exts. 5,6 and 7. As such, the punishment imposed on him is not illegal. The above issues are answered against the workman and in support of the management. Hence the following award.

AWARD

The reference is answered against the workman and in favour of the management on contest. The dismissal of Shri Ramesh Chandra Pradhan, P.A. H. Assistant from service by the management of M/s Samaleswari Regional Co-op. Milk Producers Union Ltd., Sakhipada, Sambalpur with effect from the 23rd February 1995 is held to be legal and justified and the workman is not entitled to get any relief in this case.

Dictated and corrected by me.

P. K. MOHAPATRA
15-11-2006
Presiding Officer,
Labour Court, Sambalpur

P. K. MOHAPATRA
15-11-2006
Presiding Officer,
Labour Court, Sambalpur

By order of the Governor
N. C. RAY
Under-Secretary to Government